



March 1, 2001

Ms. Linda Henry
Port of Houston Authority
P.O. Box 2562
Houston, Texas 77252-2562

OR2001-0788

Dear Ms. Henry:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144612.

The Port of Houston Authority (the "authority") received a request for the social security numbers for all current employees. You claim that the requested information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

You inform this office that the social security numbers at issue are those of two groups of employees.¹ One group consists of employees who within 14 days of beginning employment elected not to allow access to their personal information. The second group of employees either made no initial election or elected to allow public access to their personal information. You state that the employees in the latter group later elected not to allow access to their personal information after the authority's receipt of the request for their social security numbers. You claim that the social security numbers of both groups of employees are excepted from disclosure under section 552.117(1). We disagree.

Section 552.117(1) excepts a governmental employee's social security number from public disclosure *only if the employee timely elected under section 552.024 not to allow public access to his or her social security number*. See Gov't Code §§ 552.024(a), .117(1); Open Records Decision Nos. 622 (1994), 530 (1989), 455 (1987). Whether a particular piece of information is public must be determined at the time that the request for it is made. See ORD 530 at 5. Thus, section 552.117(1) protects the social security number of any employee who elected in writing not to allow access to that information prior to the date of the

¹You also inform us that the authority is disclosing the social security numbers of two employees who elected to allow public access to their personal information under section 552.024.

authority's receipt of the request for information. See Gov't Code § 552.024(e); ORD 530 at 3-5. Likewise, section 552.117(1) also protects the social security number of a newly hired employee during the initial 14-day period in which the employee may make an election whether to allow access to his or her social security number. See *id.* § 552.024(b), (d). If an employee's social security number does not fit into one of these two categories of information, then it may not be withheld from the requestor under section 552.117(1).

We further note, however, that section 552.117(2) protects the social security number of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether that individual complied with section 552.024. Several of the submitted election forms are those of employees of the authority's police department. The authority must withhold a peace officer's social security number under section 552.117(2).

The authority also claims that section 552.102 protects the social security numbers of employees who did not properly elect to have that information withheld under sections 552.024 and 552.117(1). Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" The privacy that section 552.102 affords to governmental employees' personnel records corresponds to the protection that section 552.101 provides in conjunction with the common law right to privacy. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with common law privacy only if (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *Industrial Found.*, 540 S.W.2d at 685. This office has concluded that a social security number is not protected by common law privacy. See Open Records Decision No. 622 at 2 (1994). Therefore, the authority may not withhold an employee's social security number under section 552.102.

You may be required, however, to withhold a social security number under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the authority obtained or maintains that information pursuant to any provision of law enacted on or after October 1, 1990.* See ORD 622 at 2-4. It is not apparent to this office that the authority obtained or maintained any of the information at issue under any provision of law enacted on or after October 1, 1990. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the authority to obtain or maintain a social security number. Therefore, we have no basis for concluding that any of the information at issue was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number, the authority should ensure that the social security number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the authority must withhold, under section 552.117(1), the social security number of any employee who elected in writing not to allow public access to that information prior to the authority's receipt of the request for information. Section 552.117(1) also excepts from disclosure the social security number of any newly hired employee during the initial 14-day period in which the employee may make an election whether to allow access to that information. You also must withhold the social security number of a peace officer under section 552.117(2), regardless of compliance with section 552.024. The authority may not withhold an employee's social security number under section 552.102. However, the authority may be required to withhold a social security number under section 552.101 in conjunction with federal law. The authority must release any social security number that is not excepted from disclosure under sections 552.117(1), 552.117(2), or 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

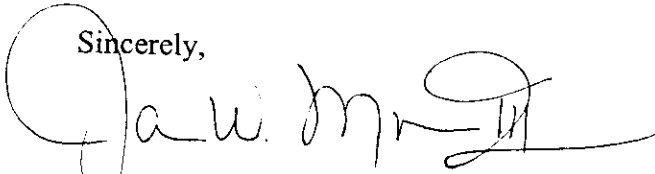
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", written over a large, light-colored circular mark.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144612

Encl: Submitted documents

cc: Mr. Tony Kovalesski/Mr. Robert Arnold
The Investigators
KPRC-TV
P.O. Box 2222
Houston, Texas 77252
(w/o enclosures)